



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:**     Calculus, Inc.  
**File:**            B-232242.2  
**Date:**            October 13, 1988

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### **DIGEST**

1. Protest against Small Business Administration's (SBA) refusal to issue a certificate of competency (COC) is untimely when not filed in General Accounting Office within 10 days of protester's receipt of notice from SBA declining to issue a COC.
2. Basis of protest concerning a solicitation impropriety raised for first time after bid opening is untimely and dismissed.

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### **DECISION**

Calculus, Inc. protests the failure of the Small Business Administration (SBA) to issue a certificate of competency (COC) with respect to invitation for bids (IFB) No. N62472-88-B-1452, issued by the Naval Facilities Engineering Command, in contemplation of a supply-type contract for the manufacture and installation of two 5-ton underhung cranes. The protester also now contends that the IFB should have been one for a construction contract, not a supply contract, because of the installation portion of the IFB.

We dismiss the protest.

The Navy rejected Calculus as nonresponsible based on Calculus' failure to demonstrate adequate production capacity including sufficient technical competence and quality assurance. Because Calculus is a small business, the Navy referred its nonresponsibility determination to the SBA for consideration under its COC procedures, as required

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by 15 U.S.C. § 637(b)(7) (1982).<sup>1/</sup> On August 8, Calculus received a letter from the SBA informing it of the Navy's bases for rejection, specifying the requirements for a COC, and stating that the application for the COC would be due August 12. Calculus filed its application for a COC on time and its facilities were subsequently inspected by the SBA.

On August 30, Calculus received notice from the SBA that it declined to issue a COC because of Calculus' failure to demonstrate adequate production capacity to perform the proposed contract. The SBA notification also stated that Calculus could request a meeting with SBA personnel to discuss the reasons for the denial. However, on September 2, Calculus instead sent a letter to the Navy contracting officer requesting reconsideration of the Navy's original nonresponsibility determination. The Navy responded, in a letter received by Calculus on September 26, that it would not overturn its earlier nonresponsibility determination. The Navy letter also indicated that Calculus should request a meeting with the SBA, not the Navy, concerning the reasons for the nonresponsibility determination and subsequent COC denial.

Calculus then filed its protest in our Office on September 30, contending that the SBA denial of a COC was made in bad faith because the protester had made some "candid remarks" to the SBA surveyors concerning alleged corruption within that agency. We find this basis of protest to be untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988), a protest must be filed within 10 working days of the date the protester was aware or should have been aware of the basis for its protest. Calculus received notice on August 30 of the SBA's denial of a COC. Calculus did not file its protest in our Office until September 30, 1 month later and clearly outside the 10-day time limit. That 10-day time limit was not tolled by Calculus' September 2 request to the Navy to reconsider the nonresponsibility finding because the SBA, not the Navy, has

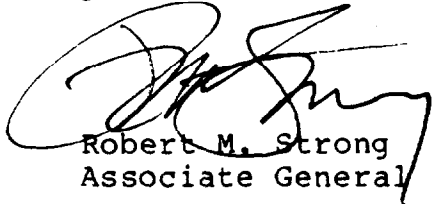
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<sup>1/</sup> Calculus had earlier protested to our Office concerning the contracting officer's finding of nonresponsibility. We dismissed that protest by notice dated August 12, 1988 because the SBA, not our Office, has the statutory authority to conclusively determine the responsibility of a small business bidder when a contracting officer finds the bidder nonresponsible.

final authority to determine the responsibility of a small business bidder, such as Calculus. We, therefore, dismiss this basis of protest as untimely.

We do note, however, that even if Calculus' protest were timely filed, this Office will overturn SBA's refusal to issue a COC only where the protester can establish with virtually irrefutable proof that government officials had a "specific and malicious intent" to injure the protester. See Marine Industries Northwest, Inc., et al., 62 Comp. Gen. 205 (1983), 83-1 CPD ¶ 159.

We also find Calculus' contention that the IFB should have been for a construction contract rather than a supply contract to be untimely. This allegation concerns an alleged impropriety that was apparent from the face of the IFB and should have been filed prior to bid opening, which according to the Navy was on May 12. See 4 C.F.R. § 21.2(a)(1) (1988). Since Calculus' protest concerning this issue was filed long after bid opening, this basis of protest is also dismissed as untimely.



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Associate General Counsel